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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	
)	
Amendment of the Commission's)	GN Docket No. 90-314
Cellular PCS Cross-Ownership Rule)	
)	
Implementation of Sections 3(n) and 332)	
of the Communications Act)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services)	

TO: The Commission

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COMMENTS OF U.S. AIRWAVES INC.
ON FURTHER NOTICE OF PROPOSED RULE MAKING

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July 7, 1995

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**COMMENTS OF U.S. AIRWAVES INC.
ON FURTHER NOTICE OF PROPOSED RULE MAKING**

U.S. AirWaves Inc. ("AirWaves"), by its attorneys, hereby submits its comments in response to the Further Notice of Proposed Rule Making in the above-captioned proceedings.^{1/} AirWaves strongly supports the Commission in its efforts to modify its C Block^{2/} broadband Personal Communications Service ("PCS") rules in light of the Supreme Court's decision in Adarand Constructors, Inc. v. Pena.^{3/} The Commission's proposed rules will remove the cloud of uncertainty that has currently adversely impacted all

^{1/} *Further Notice of Proposed Rule Making*, GN Docket No.s 93-252 and 90-315, PP Docket 93-253 (rel. June 23, 1995) (*Further Notice* or *FNPRM*).

^{2/} The C block consists of 1895-1910 MHz paired with 1975-1990 MHz. See 47 C.F.R. § 24.229(b).

^{3/} 63 U.S.L.W. 4523 (U.S. June 12, 1995).

Designated Entities^{4/} in varying degrees in their efforts to acquire capital and which undoubtedly would have raised difficulties in the future in the form of potential challenges to C Block license grants. The proposed regulatory changes are fair and equitable. They continue to allow women and minority owned businesses to obtain their anticipated levels of bidding credits and government installment financing. In addition, companies that structured their businesses based on the former rules will need to make few changes, if any, to their corporate structures, while benefiting from the decreased post-auction litigation risk attending the license grants.^{5/}

AirWaves also commends the Commission for its sensitivity to the pressing need to maintain the C Block auction schedule and for its rapid response to the *Adarand* decision. AirWaves continues to prepare to bid as a small business entrepreneur for C Block PCS spectrum, and its focus and energies continue to center on compliance with the Commission's rules governing small business PCS applicants.

AirWaves shares the Commission's concern that any further significant delays in the auction schedule would be contrary to the public interest.^{6/} Although AirWaves has used the additional time to continue its preparations for the auctions, significant additional delays

^{4/} The terms "Designated Entities" and "DEs" are used herein in reference to small businesses, rural telephone companies, and businesses owned by women or members of minority groups. See 47 U.S.C. § 309(j)(4)(D); 47 C.F.R. § 24.720(b), (c), (e).

^{5/} AirWaves does express concern, however, with extending the "49% option" to all small businesses because of the potential of risking the safeguards the FCC sought to preserve in its original rules. The agency noted the need to balance financing needs with "the need to ensure that designated entities have a significant investment in the applicant." See *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403, ¶ 62 (1994).

^{6/} See *Further Notice*, ¶ 2.

would diminish the value of any opportunities afforded to Designated Entities for participation in the provision of spectrum-based services, and would result in delays in bringing new choices in wireless telecommunications services to the public.

The "headstart" already allowed by the Commission for the A/B licensees^{7/} permits them to commence system construction and establish a customer base and name recognition, commensurately decreasing competitive opportunities for C Block licensees. The hurdles faced by Designated Entities in the areas of access to capital, recruitment of highly qualified personnel and system buildout are sufficiently formidable without adding the disadvantage of a headstart for large-scale competitors such as the A/B Block licensees. To minimize this substantial headstart, AirWaves encourages the FCC to accelerate the C Block auction process by utilizing methods such as additional bidding rounds per day, higher minimum bid increments, and quicker movement to subsequent stages of the auction. The Commission has adopted expedited auction procedures in the past; the need for such actions is particularly clear and compelling in these circumstances.

In summary, AirWaves supports the Commission's proposed substantive rules. AirWaves commends the Commission for rapidly drafting proposed rule changes that logically respond to the *Adarand* decision and for displaying its commitment to minimizing the delays in the C Block auction start date. Accompanied by the procedural changes

^{7/} This "headstart" must be measured as the time between the June 23, 1995 licensing of the A/B licensees and the date of grant of the C Block licenses. Assuming an August 29, 1995 start of the C Block auction, and in light of the inevitable time consumed by the petition to deny period and the process of awarding license grants, the goal of granting the C Block licenses in 1995 will not be realized unless the auction rounds are expedited.

suggested herein to expedite the C Block auction process, AirWaves anticipates that the auction will bring beneficial PCS competition to the industry and the nation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, a secretary with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, hereby certify that on this 7th day of July, 1995, a copy of the foregoing document was delivered by messenger to the following persons:

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